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Supreme Court, U.S.
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No. ~~1006~~

In The

SUPREME COURT OF THE UNITED STATES

70-128

MARTIN DIES, JR. ET AL,

Appellants

vs.

DAN PHILLIP CARTER, ET AL,

Appellees

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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MOTION TO AFFIRM

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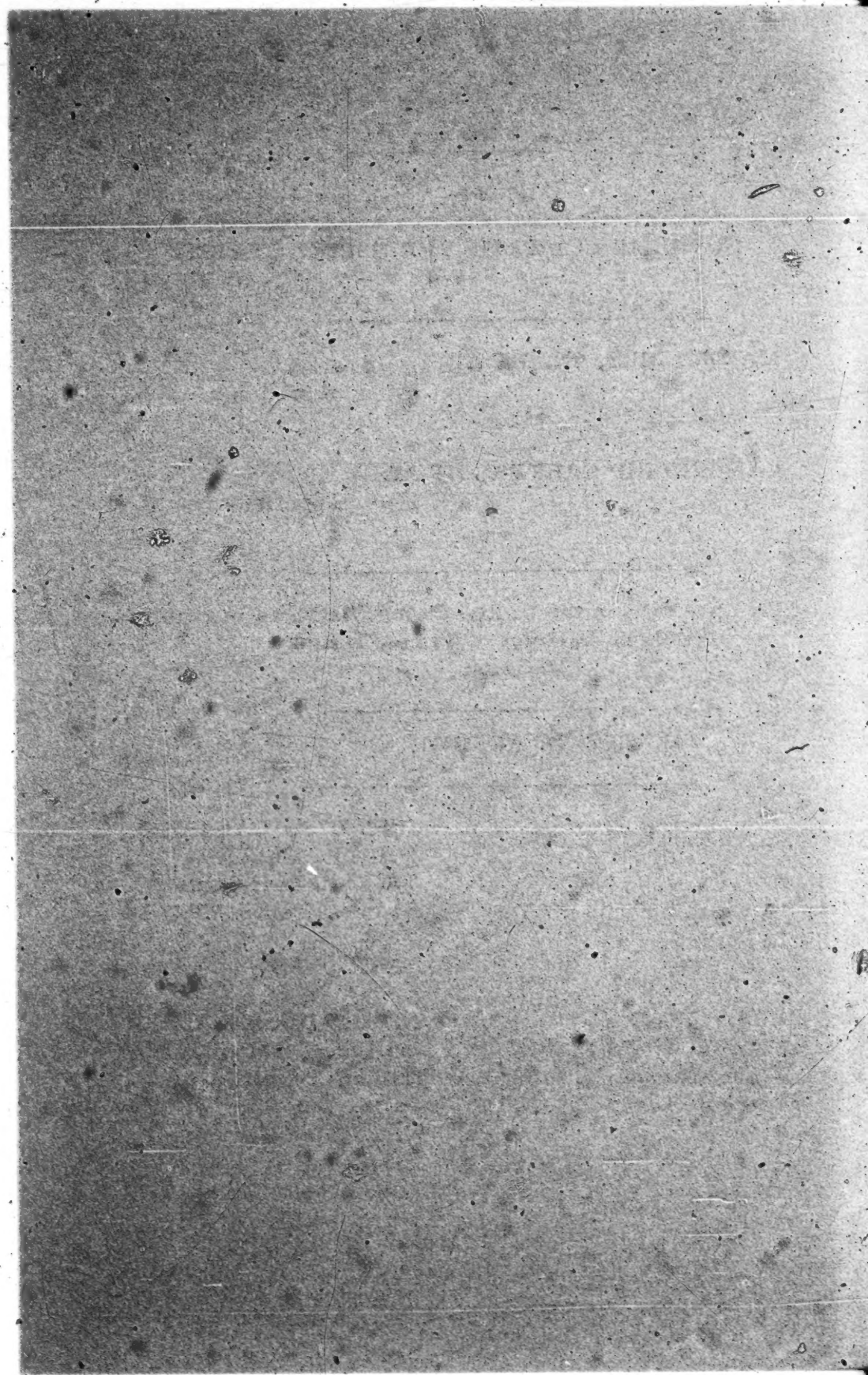

No. 1606

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1970

MARTIN DIES, JR., ET AL,

Appellants

versus

DAN PHILLIP CARTER, ET AL

Appellees

MOTION TO AFFIRM

Pursuant to Rule 16 of the Rules of The Supreme Court of the United States, Appellees Preston Smith, Governor of the State of Texas, Crawford C. Martin, Attorney General of the State of Texas, and Martin Dies, Jr., Secretary of State of the State of Texas, move that the final judgment and decree of the District Court be affirmed upon the ground that the decision below is so obviously correct as to warrant no further review.

STATEMENT

This is a direct appeal from the final judgment of the United States District Court for the

Northern District of Texas, Dallas Division, entered on the 21st day of December, 1970, declaring Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code to be unconstitutional and enjoining the State of Texas, through its political parties, from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code.

ARGUMENT

This Court has jurisdiction to hear this case; however, the Appellees submit that the decision of the district court that Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the Texas Election Code are unconstitutional is plainly correct.

In a well reasoned opinion the three judge court below considered and disposed of the contentions of Appellants. The result reached is compelled by the decisions of this Court that are cited in the opinion of the three judge court. Certainly the primary purpose of the filing fee assessments upon

candidates in the Texas primary elections is to raise revenue with which to pay the costs of said election. The candidates in Texas primary elections must pay all of the parties expenses in conducting the primary. Judge Thornberry in his concurring separate opinion in the Court below states: "Defendants have pointed to no instance in which fees of the magnitude here challenged — up to $8,900 — have received judicial sanction".

The Texas filing fee system in primary elections is evil and denies the people a fundamental political right to vote and to be candidates in primary elections. The right to seek and hold an elective office is an analogue or corollary to the right to vote and these rights are preservative of all rights and to place a price lable of $8,900 thereon is plainly unconstitutional.

THEREFORE, it is respectfully submitted that the decision below is correct and that said judgment and decree of the district court should be affirmed.

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PROOF OF SERVICE

We, Joseph A. Calamia and John L. Fashing, two of the attorneys for the Appellees herein, and both members of the Bar of the Supreme Court of the United States, hereby certify that on the 12th dav of May, 1971 we served copies of the foregoing Motion to Affirm on the following attorneys of record for the appellants, to wit: Pat Bailey, Assistant Attorney General, P. O. Box 12548 Capitol Station, Austin, Texas 78711, Charles F. Herring 906 Perry Brooks Bldg., Austin, Texas 78701; Estil Vance, Jr. 1800 First National Bank Bldg., Fort Worth, Texas 76102 Mark F. Howell, 508 Southwest National Bank Bldg. El Paso, Texas 79901.

Joseph A. Calamia
John L. Fashing